No. 01-459

(3)

IN THE

Supreme Court of the United States

EATON CORPORATION,

Petitioner

v.

CITY OF DETROIT,

Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For the Sixth Circuit

REPLY BRIEF OF PETITIONER

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CORPORATE DISCLOSURE

Pursuant to Sup. Ct. R. 29.6, Petitioner Eaton Corporation incorporates by reference the corporate disclosure statement made in its Petition for Writ of Certiorari.

REPLY BRIEF OF PETITIONER

Eaton Corporation's Petition presented the question of whether the Sixth Circuit correctly applied the "clearly erroneous standard" of Fed. R. Civ. P. 52(a) in holding - contrary to the District Court in whose presence settlement talks occurred - that the parties entered into a settlement agreement on the record. Respondent's Opposition Brief denies that the "clearly erroneous" standard applies to appellate review of a district court's pre-trial findings. If Respondent is correct that the Sixth Circuit did not apply the "clearly erroneous" standard, then review is warranted to correct this error and clarify the proper standard.

As Eaton noted in its Petition, the Sixth Circuit's opinion does not identify the standard of review that it applied below. Pet. 4-5. Eaton believes, based on the fact that the Sixth Circuit twice referred to the District Court's decision as "clearly erroneous," that the Sixth Circuit was purporting to apply Rule 52(a) in reversing the District Court's finding that no settlement occurred. *Id.* Eaton's Petition argues, however, that in fact the Sixth Circuit substituted its own interpretation of the facts for that of the District Court, contrary to *Anderson v. City of Bessemer*, 470 U.S. 564 (1985).

Respondent's Brief denies that the Sixth Circuit applied or was obliged to apply the "clearly erroneous" standard. Opp. 10-11. According to Respondent, the "clearly erroneous" standard applies only "to findings of fact made by a district court after a non-jury trial but before entry of judgment." Opp. 11. Because the District Court found *before* trial that no settlement was reached (Pet. 2-3, Supp. App. C10-11 and C17-18), Respondent asserts that the Sixth Circuit was free to apply a *de novo* standard of review.

Eaton argued below that a court of appeals must apply the "clearly erroneous" or "abuse of discretion" standard in reviewing a district court's findings as to settlement validity and enforceability. (Eaton's Final Brief on Appeal at 14-19.) This is the standard applied, for example, in *Therma-Scan, Inc. v. Thermoscan, Inc.*, 217 F.3d 414, 419 (6th Cir. 2000) (applying "clearly erroneous" standard and reversing trial court's finding that parties entered into binding settlement agreement in open court). *See also Wilson v. Wilson*, 46 F.3d 660, 664 (7th Cir. 1995) (collecting cases applying "clearly erroneous" or "abuse of discretion" standard in reviewing settlement determinations).

Respondent argued below that the *de novo* standard applied instead. (City of Detroit's Final Brief on Appeal at 21.) Respondent inaccurately characterized the issue as one of contract interpretation, not contract formation. (*Id.*) In this Court, Respondent's Brief in Opposition cites no authority other than the text of Rule 52(a) for the proposition that a pretrial finding concerning settlement is subject to *de novo* review. Opp. 10-12.

The parties agree, then, that the Sixth Circuit did not faithfully apply the "clearly erroneous" standard in reviewing the trial court's determination that no meeting of the minds occurred during pretrial settlement discussions. Where the parties differ is that Eaton argues that the Sixth Circuit purported, but failed, to apply this standard; the City of Detroit argues that the standard did not apply. This crucial difference is further reason for this Court to grant certiorari to clarify the respective roles of the District Court and the Courts of Appeals in deciding issues of fact.

For all the reasons set forth above and in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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